

Policy Brief No. 4

Protecting the Human Rights
of Cross-border Migrants:
Considerations from the
Burmese–Thai Border

Migration, Gender and Social Justice: Connecting Research and Practice Networks



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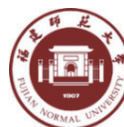
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Protecting the Human Rights of Cross-border Migrants: Considerations from the Burmese–Thai Border

Executive Summary

Thailand is an important destination for large numbers of undocumented cross-border migrants originating from its neighbouring countries. In response to this trend, a number of legislative interventions and bilateral agreements have been introduced to regulate this phenomenon through formal procedures for the recruitment of migrants as legal workers. Through insight into the case of migration along the Burmese–Thai border, this policy brief suggests that against the declared intention of regularizing migrants, current policies and instruments instead impose restrictions in various spheres, which ultimately contribute to keeping migrants in a state of legal precariousness and allow them to be exploited and harassed both in the place of destination and in the place of origin. A number of practical suggestions are made that could overcome this situation and improve the protection of the rights and dignity of cross-border migrants living in Thailand.

Policy Brief No. 4: Protecting the Human Rights of Cross-border Migrants: Considerations from the Burmese–Thai Border

This policy brief is a revised/updated version of Jackie Pollock, Ruth Pearson, Kyoko Kusakabe (2010) 'Policy brief and recommendation on undocumented labour migration in Thailand' in *Illegal, temporary and precarious state of being: Migration Art Exhibition*, MAP Foundation, University of Leeds, Asian Institute of Technology: Bangkok, Thailand, pp. 71–77, produced under the IDRC-funded project 'Gender, cross-border migrant workers and citizenship: A case study of Burmese–Thai border', led by Kyoko Kusakabe, Asian Institute of Technology and Ruth Pearson, University of Leeds.

For additional insight into the findings of the research, see:

<http://www.gender-migration.ait.ac.th/>.

Kusakabe, Kyoko and Ruth Pearson (2010) 'Transborder migration, social reproduction and economic development: A case study of Burmese women workers in Thailand', *International Migration*, 48(6): 13–43.

Pearson, Ruth and Kyoko Kusakabe (2012) *Thailand's Hidden Workforce: Burmese Women Factory Workers* London: Zed Books.

Introduction

Thanks to its status as an economic magnet in the Greater Mekong Sub-region, since the early 1990s Thailand has experienced significant cross-border inflows of people and more than 3.5 million persons without Thai nationality were living in the country in 2010. With a land border length of 4,863 kms, a significant part of this inflow is made of undocumented workers and displaced persons originating from neighbouring countries, namely Burma (officially

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Republic of the Union of Myanmar), Cambodia and Laos. Since the 1990s successive Thai governments have responded to this undocumented immigration by (a) allowing irregular migrants to register for one year's work in designated sectors, (b) arresting and deporting migrants who do not have registration documents and (c) creating work sites or economic zones in the border areas with the intention of keeping migrants at the border and preventing them from entering central Thailand. In 2010, over 1 million migrants from Burma, Cambodia and Laos were registered as workers

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engaged in low-skilled occupations, along with another 1.4 million non-registered workers as well as their dependents. An estimated half of the low-skilled migrant workers in Thailand are women. These are more often employed in seafood processing, light manufacturing, the service industries and domestic employment, whereas their male counterparts are employed in high-sea fishing, agriculture and construction.

This policy brief is based on research and on the experience of grassroots NGOs working with migrant communities along the Burmese–Thai border. It shows that despite legislation allowing the registration of migrant workers as a tool to enable them to work

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legally, cross-border migrants nonetheless face extensive limitations in their access to legal and social justice.

Research findings

Two major acts have guided the immigration policies of Thailand over the last two decades: the 1979 Immigration Act and the 1978 Foreign Employment Act. Although the former indicates that undocumented immigrants may be deported, it also allows an exemption for illegal migrant workers who declare themselves through registration. The latter indicates that immigrants must possess a work permit and are not allowed to work in sectors and activities designated by the law (including a number of those in which migrants do effectively engage), however leaving room for exceptions in the

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case of temporary work. Resting on these two acts and the flexibility they allow, since the early 1990s Thailand has implemented various measures allowing the registration of 'illegal' migrant workers through one-year renewable temporary permits, which legally would allow migrant workers to be employed pending deportation. In order to regulate the flow of migrants, the Thai government signed Memoranda of Understanding with Laos in 2002 and Burma and Cambodia in 2003. These agreements require all migrant workers to have their nationality verified before they can apply for a two-year work permit, which allows for a one-time extension of two more years. The nationality verification process started for Cambodians and Laotians in 2006, but the process

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for Burmese migrant workers was delayed due to disagreements between the two countries as to where the nationality verification should be carried out. Consequently the system only started to be operational since 2009. Initially, the Thai government set a deadline for completion of nationality verification in February 2011, but since many of the migrant workers failed to comply by this date the existing registration process is still running alongside the new nationality verification process as of April 2012. In addition to the initial cost of

registration, which is equivalent to one month's salary or more, the price of legalizing their status is increasing further as migrants rely on private brokers to carry out the nationality verification process on their behalf. Only those already registered in Thailand, with enough money and time, and a willing employer, can hope to become legalized under this new system. Most Burmese migrants were initially unwilling to have their nationality verified by the Burmese government. Some fear that by identifying their place of residence back in Burma they will expose their families to additional taxation or other measures. Many do not possess Burmese ID cards and fear that the Burmese government will refuse to verify their nationality. Others come from conflict areas and are afraid that if they disclose their place of origin they will be arrested. Current requirements therefore risk leaving migrants in a situation where their citizenship is not recognized either in the place of origin or in the place of destination. The risk of becoming legally non-existent exposes many Burmese migrant workers to a state of uncertainty, fear and insecurity that adds to the pre-existing restrictions faced by cross-border migrant workers in Thailand, which are discussed below.

- *Time restrictions*

Thailand's migration policies allow for temporary and insecure employment and do not include measures that provide for long-term migrant employment. Various registration exercises have allowed migrants to register for three months, six months or one year. From 2009, migrants entering the country legally with a temporary passport are allowed to work for two years and can then apply for a two-year extension at the end of which they are obliged to return home and not return to Thailand for at least three years.

- *Mobility restrictions*

Barriers to mobility between Thailand and the country of origin do more to prevent migrants from returning home than they do to prevent them from arriving. The impracticability of temporary return makes it more likely that migrants will remain in the country of destination even when they are not employed. In addition, migrants holding a temporary registration card are not allowed to travel outside the area where they registered. As well as being a violation of a fundamental human right, this restriction also forces seasonal workers to stay on during out-of-season periods, thus creating an over-supply of workers that forces already meagre wages

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further down. Current restrictions, limitations and difficulties of the registration process have the perverse effect of increasing the number of undocumented migrants and encouraging them to access paid work illegally.

The previous registration scheme restricted internal movement of migrants within Thailand that tied them to the place of registration and prevented them from traveling to other regions in which more preferable employment might be available. Although those who now hold temporary passports are allowed to travel freely inside Thailand and back to Burma, most Burmese migrants are still undocumented and are in fear of deportation if they travel within Thailand. This situation exposes migrants to exploitation by brokers and traffickers. Recent incidents of suffocation of migrants hiding in trucks while travelling clandestinely within Thailand is a direct and tragic consequence of this restriction.

- *Restrictions on labour rights*

Migrants' legal status depends upon whether they have registered and obtained a migrant worker card or, since 2009, whether they have completed their nationality verification and received a temporary passport. This ties cross-border migrants to their employers, decreases their autonomy as workers and increases the risk of exploitation and difficulties of access to protected working conditions and labour standards. A migrant may

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change employment only under certain conditions (e.g., death of the employer, closure of business, proved exploitation), and within seven days in which papers must be transferred from one employer to the other. This forces cross-border migrants to accept any job, regardless of conditions and pay. These restrictions contradict the right of all workers in Thailand, regardless of their status, to seek protection under the labour laws: migrants who file complaints of non-payment, exploitation or other violations are regularly dismissed from their work, lose their legal status and face the risk of being deported before the dispute can be settled. In the event of disputes, moreover, migrants also risk losing their living accommodations, given that authorities encourage employers to house migrants on site. Few alternative housing options are available, since authorities have not made provisions for social housing and public utilities (e.g., water supply, waste collection) in areas where the population has increased substantially following the inflow of migrant workers.

▪ *Restrictions on unionization*

Various factors restrict freedom of association and access to collective bargaining for migrant workers. Although migrants can join Thai unions, the Labour Relations Act of 1975 imposes that union officials must be Thai nationals, thus barring migrants from holding office in existing unions or forming unions of their own. In addition, many of the geographical areas in which migrants work do not have union offices, and many of the sectors in which they are employed are not unionized. Women workers in domestic work, sex work

‘Various factors restrict freedom of association and access to collective bargaining for migrant workers.’

and agricultural work, in particular, are not fully protected by labour laws. These limitations are contrary to the spirit of decent work and workers’ rights as set out by existing ILO conventions, although these measures have not been ratified by the Thai government.

▪ *Restrictions on accessing social security*

Once migrant workers have completed the nationality verification process and obtained a work permit, they are eligible to be covered under the Social Security Scheme and Workers’ Compensation Fund. However, the inclusion is not mandatory. Migrant workers remain excluded from Thai social security provisions, thus depriving them of rights, such as severance pay packages, maternity benefits and child allowance, free health care, and compensation for injuries following workplace accidents.

▪ *Restrictions on accessing health care*

Only registered migrants can benefit from the universal health care services of the Thai government. Their dependents are excluded. The Department of Public Health is currently unable to cater for the needs of migrants, and health volunteers from NGOs and CBOs contribute to public health by providing services that target the migrant population. The reproductive rights of migrant women are an issue of particular concern: pregnant women have been publicly threatened with

‘The reproductive rights of migrant women are an issue of particular concern: pregnant women have been publicly threatened with deportation and local authorities encourage employers to return pregnant women.’

deportation and local authorities encourage employers to return pregnant women. In absence of maternity leave, migrant women seek illegal back-street

abortions, which may result in death or long-term damage. Women who decide to keep their babies struggle to survive with no support from social services or their extended family.

▪ *Family restrictions*

Although migrant workers are able to obtain the status of temporary workers in Thailand, their dependents have only been recognized in occasional policies. The 2005 Cabinet Resolution on the Education of Non-documented and Non-Thai People, for instance, allows for all children (including those of migrants) to attend Thai schools and obtain a ten-year residency while studying. This nonetheless leads to the possibility that members of a same migrant family may hold a different legal status, which could lead to separation in the event of raids and deportation.

▪ *Restrictions on participating in society*

Current migration policies do not address the integration of migrants into Thai society. Instead, widespread practices of housing migrant workers on site and imposing on migrants long working hours and little free time result in segregated communities. This raises mutual fear and distrust, which breed social tensions. Although the education policy allowing migrant children to integrate into Thai schools does contribute to the acceptance of migrant families into Thai society, most of these children return to the work sites of their parents

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in the evenings, thus diminishing their ability to fully integrate into Thai society.

Conclusion

The Government of Thailand has made significant efforts over the years to register large numbers of undocumented cross-border migrants in the country by providing them with temporary permits as low-skilled workers. Despite these efforts, national laws and regulations have proved unable to offer full protection to regularized workers and their other migrant family members. The recent introduction of the nationality verification process and the new work permits do not seem to have improved the precarious situation of the migrant workers, who continue to be exposed to exploitative practices and rights violations.

Implications and recommendations

In order to improve the protection of the rights and dignity of cross-border migrants, the following recommendations are made to the Government of Thailand.

- *Establish simplified processes for legalization*

To respond to the reality of the situation where migrants will continue to arrive in the country without documents due to the political situation in Burma (Myanmar), a different, simplified process of registration could be employed. This could consist of:

- (1) Developing registration booths at the Thai side of the border where a migrant ID card could be issued on the spot with a computerized system.
- (2) Providing migrants with these ID cards access to the Thailand's Department of Employment's job-finding services. Official information booths could supply information about job demands around the country and migrants could legally travel to find work.
- (3) Institute a system whereby, when migrants have found a job, they could register with the local authorities for their ID card to be activated in that province and be able to access health, education and social services.

- *Ease dependency on employers*

Migrant workers who wish to change their employment, should be allowed a reasonable time to find new employment (minimum two months).

Migrant workers should have the right to choose their living accommodations and local authorities should ensure that sufficient housing is available with proper public facilities (water supply, garbage collection, etc.).

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Migrants who file complaints against their employers should be protected from automatic dismissal and should not lose their legal status as a consequence of exercising their labour rights. Migrants pursuing legal cases should be provided protection and status to stay for the duration of the process.

- *Ease mobility restrictions*

Since migrants will always travel to where there is work available, they should be allowed to travel without restrictions and to use public transport. This is particularly important to avoid tragedies such as the suffocation of migrants in the container in Ranong and also to lessen the need for brokers and the power of traffickers.

- *Revoke unionization restrictions*

Migrant workers should be able to fully exercise their right to collective bargaining and to participate actively in unions. The Labour Relations Act should be reformed to respond to the current labour situation in Thailand. When migrants are not yet able to form or join existing unions, the government should recognize migrant

'The Labour Relations Act should be reformed to respond to the current labour situation in Thailand.'

workers associations and include them in policy-level discussions.

- *Recognize migrant families*

Dependents of migrant workers should have access to social services such as education and health services. Dependents should be able to register and participate fully in the social life of the community.

- *Lift social security restrictions*

Instead of one-off payment of health insurance, migrant workers and their employers in all sectors/occupations should be mandated to join National Social Security Scheme which offers free health care, unemployment benefit, maternity benefit and child allowances, as well as access to Workmen's Compensation Funds which covers compensation for Occupational Health and Safety (OHS) injuries. This would also anticipate a time when ASEAN may implement a portable social security system.

- *Promote reproductive rights*

Migrant health volunteers who have provided services in collaboration with the Department of Public Health and NGOs and CBOs should be given recognition for their contribution to the public health of the country and should be able to attend trainings and be promoted and be employed as migrant health workers. In addition to the general health workers, a cadre of migrant women reproductive specialists should be supported.

Pregnant migrant women should not face discrimination in the workplace or living accommodations.

- *Make universal access to health genuinely universal*

All migrants regardless of legal status should be able to access health care.

HIV-positive migrants should be included in all universal access schemes to antiretroviral drugs (ARVs) and pregnant HIV-positive migrant women should be able to access the latest available treatments.

'All migrants regardless of legal status should be able to access health care.'

- *Advance integration policies*

Local authorities should be encouraged to promote integration policies, ensure that migrant communities have equal access to services and education and are included in local events. Migrant communities should also be able to host their own significant events. Cross-cultural events should be promoted in the community and schools.

Postscript : Implications of recent political changes in Burma

In April 2012 Aung San Suu Kyi and 42 other members of the National League for Democracy were elected to the Burmese Parliament following changes towards a civilian government in Burma. Since then the international community has supported the suspension of trade sanctions against Burma. There is also increasing interest from international investors, aid agencies and NGOs to participate in the changing economic and political developments in the country. However there remain many problems. The armed forces still dominate the political structures and the majority of the population outside the Yangon urban heartlands have yet to experience any improvement in their situation. Ethnic minority areas, particularly around the borders are still suffering from military aggression, and expulsion and displacement are continuing.

There is a real danger that the international euphoria over what as yet are limited changes in Burma will deflect attention from the plight of migrant workers already in Thailand. Migrant organizations on both sides of the border are reporting a great deal of fear and scepticism amongst those currently working in Thailand about the possibilities of any economic opportunities for them and their families if they return home. Whilst there is of course hope that things will continue to improve, there is also fear about political reprisals against migrants and their families. Government spending on health, education and other social sectors remain very low by regional standings in spite

of official commitments for improvement, and the majority of the population continue to be excluded from such services. Meanwhile the appreciation of the Burmese currency (the *kyat*) resulting from the expectation of increased international trade and investment increases the vulnerability of Burmese migrant workers in Thailand who are seeing the remittance value of their earnings falling on a daily basis. It is essential that the international community and the Thai authorities continue to exercise caution, and maintain their commitment to supporting the Burmese migrant workers who are likely to remain in Thailand for the foreseeable future.

